



# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।  
Separate paging is given to this Part in order that it may be filed as a separate compilation.

## RAJYA SABHA

The following Bills were introduced in Rajya Sabha on the 24th March, 2005:—

### I

#### BILL No. LIII OF 2004

*A Bill to provide for the establishment of a Central Authority for awareness, prevention, and control of AIDS and protecting the rights, providing social support, rehabilitation and other welfare measures for AIDS/HIV infected persons and for matters connected therewith and incidental thereto.*

Be it enacted by Parliament in the Fifty-fifth Year of the Republic of India as follows:—

1. (1) This Act may be called the Protection of Rights and Welfare Measures for HIV Infected Persons and AIDS Patients Act, 2004.

Short title,  
extent and  
commencement.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires:—

Definitions.

(a) 'AIDS' means Acquired Immuno Deficiency Syndrome in a person resulting from HIV infection;

(b) "appropriate Government" means in the case of a State, the Government of that State and in other cases, the Central Government;

(c) "authority" means the Central Authority for prevention of AIDS established under section 5;

(d) "HIV infection" means the presence of HIV antibodies or antigens in the body of a person detected on the basis of test;

(e) "HIV" means Human Immuno Deficiency Virus;

(f) "HIV infected person or AIDS patient" means any person certified by any recognized health institution as a carrier of HIV or infected by AIDS;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "test" means a serological procedure followed for detection of HIV antibodies or antigens in the body of a person.

Consent for  
HIV Test and  
Treatment.

3. Notwithstanding anything contained in any other law for the time being in force, no person shall be forced, induced or influenced for HIV test/treatment or research unless his consent is obtained by explaining him about such procedure in a language, which is clearly understood, or in the manner suitable to him;

Provided that no such consent shall be required when testing of blood, organs, semen, other body fluids, etc. is ordered by a court or permitted by law.

*Explanation*—for the purpose of this section "consent" means consent obtained without undue influence, coercion, fraud, misrepresentation and mistake.

Right of  
confidentiality.

4. Notwithstanding anything contained in any other law for the time being in force, HIV infected person or AIDS patient shall have the right to confidentiality regarding information taken, disclosed recorded in connection with HIV counselling, testing, treatment or research through data protection method or any other way as may be prescribed by the appropriate Government:

Provided that no such confidentiality shall be maintained if it is necessary for the treatment and best interest of the patient or ordered by a court of law or is necessary to protect persons at significant risk.

Central  
Authority for  
Prevention of  
AIDS.

5. With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be constituted an Authority by the name of the Central Authority for Prevention of AIDS.

Composition  
of the  
authority.

6. (1) The authority shall consist of the following members namely:—

(i) the Union Minister of Health, who shall be the *ex-officio* Chairman of the Authority.

(ii) three members of Parliament, two from the Lok Sabha and one from the Rajya Sabha; who shall be elected by the respective Houses of Parliament as members of the Authority for a period of three years; and

(iii) five members to be nominated by the appropriate Government from different non-governmental organization (NGO) having specialized knowledge in the field of prevention, control and research of AIDS;

(iv) five members to be appointed by the Central Government in such manner as may be prescribed.

(v) the Secretary to the Union Health Ministry who shall be the *ex-officio* Secretary of the Central Authority.

(2) The head office of the Authority shall be at Jaipur in the State of Rajasthan.

7. The functions of the Authority shall be:—

Functions of  
the Authority.

(a) create nation wide awareness programme through print and electronic media for prevention and control of AIDS;

(b) collect information and data related with AIDS/HIV infected patients;

(c) formulate a national policy for the prevention and control of AIDS and HIV infection;

(d) co-ordinate with State agencies for dissemination of information and innovations, for control and prevention of AIDS and HIV infection;

(e) provide assistance to the Non-Governmental Organisations working for prevention and control of AIDS and HIV infection;

(f) ensure that any HIV infected person or AIDS patient is not discriminated and proper health care is provided for treatment and counseling as availed by any other patients from Government and Private health care institutions;

(g) provide for suitable and conducive conditions for the HIV infected persons or AIDS patients for employment and reasonable accommodation or alternate employment provided in the same organization to mitigate any discrimination;

(h) provide specific measures for empowering the sex workers community and to create an appropriate forum for their support; and

(i) provide special care to the children who are at the significant risk of HIV infection and prepare programme from time to time with the assistance of appropriate Government for their welfare.

8. There shall be a secretariat consisting of such number of officers and staff with such service conditions as may be prescribed.

Secretariat of  
the Authority.

9. The Central Government shall provide from time to time, after due appropriation made by Parliament by law, adequate funds for the functions to be undertaken by the authority.

Funds of  
Authority.

10. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Act to have  
overriding  
effect.

11. The appropriate Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make  
rules.

## STATEMENT OF OBJECTS AND REASONS

Acquired Immuno Deficiency Syndrome is Commonly known as AIDS. It has assumed proportion of major health hazard in several parts of world. No vaccine is presently available for immunization against the virus nor it is possible to cure the disease, which invariably results in death.

India does not yet has a complete picture as to the magnitude of the HIV pandemic especially considering the lack of surveillance data. However, where surveillance has taken place it is seen that the pandemic follows its unbridled path and is beginning to surface in all spheres of life including homes, workplace and health care sector. It is now quite clear that HIV/AIDS in India is not just a medical issue but also an issue that cuts across all economic, social and cultural realms. It is also an issue that does not affect a particular groups but has an impact on all. It is important, therefore, that the tendency to blame a certain section of society needs to be combated if prevention and control efforts are to be made effective.

As the pandemic has grown, experiences reflect a consistent pattern through which discrimination, marginalisation, stigmatisation and more generally, a lack of respect for the human rights and dignity of individuals and groups heighten their vulnerability to HIV/AIDS. Very often such discrimination stems from ignorance about the route of HIV/AIDS transmission and unwarranted fears of infection. The ignorance and fear has led to harsh laws and measures that violate the rights and freedoms of those trying to avoid HIV infection and of those already living with HIV/AIDS.

No one has experienced fear and courage, ignorance and insight, prejudice and acceptance, despair and hope more fully or intensely than people living with HIV/AIDS. Yet, this experience is not confined to just AIDS or HIV patients, but also those who are dependent on, related to or associated with them. These persons include spouse, partners, children, widows, orphans, parents, other family members and friends of such patients. Clearly, this is a vast and significant segment of society.

In order to combat such menace, a comprehensive legislation is required which should not tackle this issue as a typical medico issue but in a broader framework of socio-economic and medico issues taken comprehensively.

Hence this Bill.

NAJMA HEPTULLA

## FINANCIAL MEMORANDUM

Clause 5 of the Bill provides for the constitution of the Central Authority for prevention of AIDS. Clause 8 of the Bill provides for the constitution of a Secretariat. The Bill, if enacted will involve an expenditure of Rupees two hundred crores as recurring expenditure from the Consolidated Fund of India.

The Bill will also involve a non-recurring expenditure of Rupees five hundred crores.

**MEMORANDUM REGARDING DELEGATED LEGISLATION**

Clause 11 of the Bill empowers the Central Government to make rules for the purposes of this Bill. The rules relate to matter of details only.

The delegation of legislative power is of a normal character.

## II

## BILL NO. XXIII OF 2005

*A Bill to prevent throwing or depositing non-biodegradable garbage in public drains, roads and places open to public view so as to protect the environment from being polluted by such garbage and for matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Environment Protection (Control of Non-biodegradable Garbage) Act, 2005.

(2) It extends to whole of India.

(3) It shall come into force at once.

Short title,  
extent and  
Commence-  
ment.

## Definitions

2. In this Act, unless the context otherwise requires,—

(a) "appropriate Government" means in the case of a State Government of that State and in other cases the Central Government.

(b) "bio-degradable garbage" means the garbage or waste material capable of being destroyed by the action of living beings or organism.

(c) "house gully" means a passage or strip of land constructed, set apart or utilized for the purpose of serving or carrying a drain or affording access to the latrine, urinal, cesspool or other receptacle for filth or other polluted matter, by persons employed in the clearing thereof or in the removal of such matters therefrom;

(d) "Local Self Government Institution" means a Panchayat, Municipality or a Contonment Board or any such authority by whatever name called;

(e) "market" includes any place where people assemble or which are exposed for sale of meat, fish, fruits, vegetables, food, or any other articles for human use or consumption with or without the consent of the owner of such place, notwithstanding that there may be no common regulation for the concourse of the buyers and the sellers and whether or not any control is exercised over the business of, or the person frequenting, the market by the owner of the place or by any other persons;

(f) "municipal area" means territorial area of a municipality;

(g) "non-biodegradable garbage" means the waste garbage or material which is not bio-degradable garbage and includes polythene, nylon and other plastic goods such as Po' vinyl Chloride (PVC), Polypropylene and Polystyrene, which are not cabable of being destroyed by an action of living beings or organisms and are more specifically included in the Schedule to this Act;

(h) "occupier" includes,—

(i) any person who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable;

(ii) an owner in occupation of or otherwise using his land or building;

(iii) a rent free tenant of any land or building; and

(iv) any person who is liable to pay to the owner damages for the use and occupation of any land or building;

(i) "owner" includes a person who for the time being is receiving or is entitled to receive, the rent of any land or building, whether on his own account or on account of himself and others or as an agent, trustee, guardian or receiver for any other or who should so receive the rent or be entitled to receive it if the land or building or part thereof were let to a tenant;

(j) "place" means any land or building or part of a building and includes garden, ground and out houses, if any, pertaining to a building or part of a building;

(k) "Place open to public view" includes any private place or building, monument, fence or balcony visible to a person being in, or passing along, any public place;

(l) "prescribed" means prescribed by rules made under this Act;

(m) "Public Analyst" means the person appointed or recognized to be the Government Analyst in relation to any environment laboratory established or recognized, under the provisions of the Environment (Protection) Act, 1986; and

29 of 1986.

(n) "public place" means any place which is open to use and enjoyment of the public whether it is actually used or enjoyed by the public or not and includes a road, street, market, house-gully or way, whether a thoroughfare or not, and landing place to which public are granted access or have a right to resort or over which they have a right to pass;

3. (1) Notwithstanding anything contained in any other law for the time being in force, the appropriate Government shall, in order to protect the environment, ensure that no person, by himself or through another, shall knowingly or otherwise throw or cause to be thrown in any drain, ventilation shaft, pipe and fittings, connected with the private or public



drainage works, any non-biodegradable garbage provided in the schedule or any bio-degradable garbage in a non-biodegradable bag or container likely to—

- (a) injure the drainage and sewage system;
- (b) interfere with the free flow or affect the treatment and disposal of drain and sewage contents; and
- (c) be dangerous or cause a nuisance or be prejudicial to public health or environment.

(2) No person shall, knowingly or otherwise, place or permit to be placed, except in accordance with such procedure and after complying with such safeguards as may be prescribed, any bio-degradable or non-biodegradable garbage in any public place or in a place open to public view, unless,—

- (a) the garbage is placed in a garbage receptacle; or
- (b) the garbage is deposited in a location designated by a Local Self Government Institution having jurisdiction on an area for the disposal of the garbage.

4. It shall be the duty of the Local Self Government Institution, or any officer authorized by it, as may be prescribed by the appropriate Government from time to time, to—

Provision for placement of receptacles and places.

- (a) place or provide in proper and convenient place public receptacles, depots or places for temporary deposit or collection of non-biodegradable garbage;
- (b) provide separate dustbins for temporary deposit of non-biodegradable garbage other than those kept and maintained for deposit of bio-degradable garbage;
- (c) provide for the removal of contents of receptacles, depots and the accumulation at all places provided or appointed by it under clause (a) of this section; and
- (d) arrange for recycling of the non-biodegradable garbage collected under this Act.

5. It shall be the duty of the owners and occupiers of all lands and buildings—

Duty of owners and occupiers to collect and deposit non-biodegradable garbage, etc.

- (a) to collect or to cause to be collected from their respective land and buildings the non-biodegradable garbage and to deposit, or cause to be deposited, in public receptacles, depots or places provided for temporary deposit or collection of the non-biodegradable garbage by the Local Self Government Institution in the area;
- (b) to provide separate receptacles or dustbins, other than those kept and maintained for deposit of bio-degradable garbage of the type and in the manner prescribed by the Local Self Government institution or its officers for collection therein of all the non-biodegradable waste from such land and buildings and to keep such receptacles dustbins in good condition and repair.

6. The appropriate Government may, by notice in writing, require the owner or occupier or part-owner, or person claiming to be the owner or occupier of any land or building, which has become a place of unauthorized stacking or deposit of non-biodegradable garbage and is likely to cause a nuisance, remove or cause to be removed the said garbage so stacked or collected; and if, in its opinion, such stacking or collection of non-biodegradable waste is likely to injure the drainage and sewage system or is likely to be dangerous to life, health and environment, it shall forthwith take such steps at the cost of such persons as it may think necessary.

Removal of non-biodegradable garbage.

7. (1) After the commencement of this Act, manufacturing of soft drink bottles, shampoo and detergent bottles used with Polyethylene Terephthalate (PET), milk bottles, house hold cleaners, supermarket bags used with high density polyethylene (HDPE), bread bags used with low density polyethylene (LDPE), bread bag tags, jars, and wrapping films used with polyethylene resins and mixed plastic used for feathers, toys, etc, is hereby banned.

Banning of Plastic products for packaging of certain items.

(2) No person shall use plastic or its derivatives for the manufacturing for use by infants.

Penalties.

8. (1) Whoever is guilty of any act or intentional omission in contravention of any of the provisions of this Act or any rules, notifications or orders made, issued or given under this Act, shall be punishable with fine which may extend to rupees five thousand.

(2) Whoever having been convicted of an offence under this Act is again convicted of any offence under this Act shall be punishable with fine, which may extend to double the fine provided for the offence under sub-section (1).

(3) Whoever in any manner aids, abets or is accessory to the commission of any offence under this Act shall be punished with fine prescribed for the offence under sub-section (1).

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 an Offence punishable under this Act shall be cognizable and bailable. 2 of 1974.

Offences by Companies.

9. (1) If the person committing an offence punishable under this Act is a Company, every person who, at the time of the commission of the offence, was in charge of, and responsible to the Company for the conduct of the business of the Company, as well as the Company shall be deemed to have guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section that render any person liable to any punishment provided in the Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent commission of the offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Act has been committed by a Company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any gross negligence on the part of any Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section.—

(a) "Company" means any body corporate and includes a firm or other association of individuals; and

(b) "Director" in relation to a firm means a partner in the firm.

Offences to be tried summarily.

10. All offences under this Act shall be tried in a summary way by a Judicial Magistrate of the First Class and the provisions of sections 262 to 265 (both inclusive) of the Code of Criminal Procedure, 1973 shall, as far as may be, apply to such trials. 2 of 1974.

Compounding of offences

11. Any offence punishable under this Act may, before the institution of the prosecution, be compounded by the Local Self Government Institution concerned or by such officer as may be authorized by the appropriate Government in this behalf, on payment, for credit to the Local Self Government Institution concerned, of such sums not exceeding fine amount fixed for the offence.

Power to amend Schedule.

12. (1) Where it is expedient to do so, the Central Government may, in public interest and in consultation with the Public Analyst, by notification in the Official Gazette, add to, or omit from the Schedule any item of non-biodegradable waste and thereafter the Schedule shall be deemed to be amended accordingly.

(2) Every notification under sub-section (1) shall be laid, as soon as may be after it is made, before the Parliament.

Central Government to provide funds

13. The Central Government shall provide necessary requisite funds after due appropriation made by Parliament by law in this behalf, from time to time for the purposes of this Act.

14. The provisions of this Act are in addition to, and not in derogation of the provisions of any other law for the time being in force.

Savings.

15. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.

Power to  
make rules.

**SCHEDULE***[See Section 2(g)]***NON-BIODEGRADABLE GARBAGE**

1. Polyethylene
2. Polycarbonate
3. Polypropylene
4. Polystyrene
5. Polyvinyl Chloride (PVC)
6. ABS
7. Acetyl
8. Cellulose Acetate
9. Cellulose Acetate
10. Cellulose Acetate Butyrate
11. Nylon

## STATEMENT OF OBJECTS AND REASONS

Environment pollution and its ill effects have attracted the attention the world over and ways and means to control the pollution are being thought of and implemented. In this regard removal of Garbage has become a major problem in Cities and Towns. Solid waste disposal is duty of Local Self Government Institutions. Major portion of the solid waste is of biodegradable, i.e. it can be destroyed by the action of living being and organisms. Such biodegradable garbage can be converted into compost or used as a source of energy or manure. Whereas, non-Biodegradable garbage is the bane of modern civilization. The advent of plastic made up of Polyvinyl Chloride (PVC), Polypropylene and Polystyrene and other substances create environmental disasters leading to health hazards. Such substance chokes gutters, drains and marine outfalls, creating nightmare for sewage engineers. It clogs the soil, preventing the free flow of water through it and depleting it of its fertility and water table. The Bill seeks to control the use and disposal of such non-biodegradable substances.

Hence this Bill.

NAJMA HEPTULLA

## FINANCIAL MEMORANDUM

Clause 13 of the Bill provides that the Central Government shall provide funds for implementation of the various provisions of the Act. The Bill, if enacted, will involve a recurring expenditure of rupees ten crores per annum.

However, non-recurring expenditure to the tune of rupees fifty crores will also be involved.

**MEMORANDUM REGARDING DELEGATED LEGISLATION**

Clause 15 of the Bill empowers the Central Government to make rules for the purposes of this Bill. The rules relate to matters of details only.

The delegation of legislative power is of a normal character.

## III

## BILL NO. XVI OF 2005

*A Bill to provide for compulsory parliamentary approval of international treaties and agreements and for matters connected therewith or incidental thereto.*

BE it enacted by the Parliament in the Fifty-sixth Year of the Republic of India as follows:—

Short title  
and commence-  
ment.

1. (1) This Act may be called the International Treaties and Agreements (Compulsory Approval by Parliament) Act, 2005.

(2) It shall come into force with immediate effect.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) 'enter into force in respect of India means':

(i) in relation to a treaty, refers to the treaty becoming binding upon India;

(ii) in relation to a reservation by India to a treaty in the application of section 8 to the reservation, refers to the reservation having effect in respect of India's adherence to the treaty;

(b) 'House' means either House of the Parliament;

(c) 'treaty' means any agreement or proposed agreement in writing between India and one or more countries, and one or more international organisations, including



a protocol or attachment to such an agreement, which confers or imposes or would confer or impose rights and obligations upon India and those countries or which is intended to be binding upon the parties to the treaty.

3. Action by which a treaty would enter into force in respect of India shall not be taken before the treaty is approved in accordance with the provisions of this Act.

Treaties not to enter into force until approved.

4. (1) When it is proposed that a treaty enter into force in respect of India, the concerned Minister shall make a declaration to that effect published in the Official Gazette:

Treaties and accompanying documents to be tabled.

(2) A copy of a treaty referred to in a declaration under sub-section (1) shall be tabled in each House within fifteen sitting days of that House after the Gazette notification of the declaration.

(3) A copy of a treaty tabled in each House under sub-section (2) shall be accompanied by:

(a) a treaty impact statement, setting out:—

- (i) reasons for India being a party to the treaty;
- (ii) any advantages and disadvantages to India of the treaty entering into force in respect of India;
- (iii) obligations which would be imposed on India by the treaty;
- (iv) any economic, social and environmental effects of the treaty, of the treaty entering into force in respect of India, and of the treaty not entering into force in respect of India;
- (v) the costs to India of compliance of the treaty;
- (vi) the likely effects of any subsequent protocols to the treaty;
- (vii) measures which could or should be adopted to implement the treaty, and the intentions of the Government in relation to such measures, including legislation;

(b) a statement setting out the consultations which have occurred between the States and the Union Territories in respect of the treaty.

5. A treaty shall be deemed to have been approved in accordance with this Act if:—

Approval of treaties.

(a) the treaty and accompanying documents are tabled in each House in accordance with section 4; and

(b) notice of a motion that the treaty be considered is not given in either House within fifteen sitting days of that House after the treaty is so tabled in that House; or

(c) such a notice is given in each House within the period referred to in para (b), and each House, subsequent to the giving of the notice, that House passes a resolution approving the treaty by a majority of two-thirds of members of that House present and voting.

6. (1) A notice of motion given in accordance with section 5 for the consideration of a treaty may not be withdrawn except in accordance with a notice to withdraw the notice on a subsequent day.

Withdrawal of a notice of motion.

(2) When a notice to withdraw a notice of motion is given in a House, another member of that House may, before the notice is withdrawn, substitute his or her name, as mover of the

motion, for the name of the member who earlier gave the notice, and the notice then shall be deemed not to have been withdrawn.

Effect of  
dissolution etc.  
on a notice of  
motion

7. If, after notice of a motion has been given in accordance with section 5 in respect of a treaty the notice *shall* not lapse, even if:—

(a) the House of People is dissolved or its term expires, or the Parliament is prorogued; and

(b) at the time of the dissolution, expiry of term or prorogation:

(i) the notice of motion has not been withdrawn; or

(ii) the motion has not been called on; or

(iii) the motion has been called on and moved and has not been withdrawn or otherwise disposed of.

*Explanation:* For the purposes of section 6 the treaty is deemed to have been tabled in the House in which the notice was given on the first sitting day of that House after the dissolution, expiry of term or prorogation.

Approval of  
reservations.

8. When there is a reservation by India in respect of a treaty proposed to enter into force in respect of India, this Act applies to the reservation as if the reservation were a treaty.

## STATEMENT OF OBJECTS AND REASONS

There are two major deficiencies in the system as it currently operates. The first relates to what is perceived to be the excessive power of the Executive in the field of foreign affairs. The concern is that the practice, whereby the Executive without significant parliamentary involvement enters into treaties, is 'undemocratic', as treaties can have a range of significant effects on the Indian legal and administrative systems and the Indian economy. India is currently facing this situation due to commitments made by the Executive in Uruguay rounds of negotiations.

Parliamentary approval of legislation which implements treaties is not a satisfactory form of accountability. Even when treaties are not implemented by legislation, they may still have domestic consequences. Treaties can affect the interpretation of law, by being used to resolve ambiguities in legislation or gaps in the Indian law.

The second problem with the current system is that Parliament is involved only after there is an internationally binding treaty, and is very often placed in a position where failure to pass proposed legislation will violate a treaty, leaving India internationally responsible. Parliament may have little effective choice but to enact implementing legislation once an international commitment is made. Treaty negotiation will inevitably be dominated more by the Executive than the legislature. It is difficult for Parliament to be involved with ongoing treaty negotiations as their basis shifts from day to day; and they are usually conducted in foreign countries by professional negotiators from the Ministry of External Affairs and Ministry of Commerce.

Treaty negotiation may be an inherently Executive function, but treaty ratification is not. Treaty ratification is akin to law-making. As with ordinary legislation, the approval of treaties involves the consideration by Parliament of a text largely completed by the Executive. The large number of countries which have legislative involvement in treaty ratification suggest that it is not inherently an Executive concern.

In the United States after the Executive branch has negotiated a treaty, it is transmitted to the Senate for its advice and consent. In the Senate, treaties are referred to the Foreign Relations Committee which has exclusive jurisdiction over treaties. The Committee conducts an inquiry, holds public hearings, and recommends whether the Senate should approve the treaty, conditionally approve it or reject it. The constitutional, legal and administrative arrangements for treaty making in the United States provides an example of legislative involvement in a nation's treaty making process. The role played by the Congress, and particularly the Senate, in the scrutiny and approval of the United States treaties, ensures that treaty making in the United States creates no democratic deficit.

It is becoming increasingly obvious that the Indian system needs greater parliamentary involvement in the treaty-making process.

Hence this Bill.

NAJMA HEPTULLA

## IV

## BILL NO. II OF 2005

*A Bill to provide for the formulation of special plans by the Central Government to make safe and potable water available to every household of the desert and drought prone areas of the country so as to mitigate their miseries and for matters connected therewith and incidental thereto.*

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

Short title,  
extent and  
commencement.

1. (1) This Act may be called the Safe Potable Water (Special Provisions for Desert and Drought Prone Areas) Act, 2005.

(2) It extends to the whole of India.

(3) It shall come into force at once.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "appropriate Government" means in the case of a State the Government of that State and in other cases the Central Government;

(b) "desert and drought prone area" means such area full of sandy barren land with very little ground water and vegetation and where average rainfall is consistently below normal like the areas in Rajasthan and Gujarat and includes such area which is declared as desert or drought prone by the Central Government, by notification in the Official Gazette, from time to time;

(c) "prescribed" means prescribed by rules made under this Act;

(d) "Special Scheme" means "Special Safe Potable Water Scheme for Desert and Drought Prone Areas" formulated under Section 4.

3. It is hereby declared that it is expedient in the public interest that the Central Government should frame Special Scheme for the people of desert and drought prone areas to mitigate their drinking water problems.

Declaration as to expediency in the public interest.

4. (1) Notwithstanding anything contained in any other law for the time being in force, the Central Government shall, as soon as may be, formulate a Special Scheme to be known as the "Special Safe Potable Water Scheme for Desert and Drought Prone Areas" to make available adequate safe drinking water to the people and their livestock of the desert and drought prone areas and in particular to the people of desert States like Rajasthan and Gujarat, within a time frame.

Special Safe Potable Water Scheme for desert and drought prone areas.

(2) The Special Scheme formulated under sub-section (1) shall, *inter alia*, provide for,—

(a) priority plans for such villages and hamlets where there is not a single source of water and in particular the hamlets of *dalits* and *Adivasis*;

(b) installation of desalination and other water treatment plants in such areas where available water is saline or contains excess mineral contents such as iron, lead, zinc, arsenic, fluoride or other toxic or noxious substances or is otherwise not fit for human consumption;

(c) installation of hand pumps and digging of covered wells in those areas where people use stagnated pond water for their drinking, cooking, washing and other purposes;

(d) construction of canals joining with rivers to carry the water to desert and drought prone areas to be supplied to citizens after treatment;

(e) supply of potable water through pipes and tankers wherever necessary;

(f) provision of compulsory roof top rain water harvesting;

(g) such other contingency plan as the appropriate Government may deem necessary for the purposes of this Act.

5. The Special Scheme so formulated under Section 4 shall be implemented by the appropriate Government in such manner as may be prescribed.

Appropriate Government to implement the Special Scheme.

6. The Central Government shall provide necessary requisite funds after due appropriation made by Parliament by law in this behalf, from time to time, for the purposes of this Act.

Central Government to provide funds.

7. The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force.

Savings.

8. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

## STATEMENT OF OBJECTS AND REASONS

For the survival of living beings on this earth, water is a necessity. Safe potable water is required for consumption. Water is also required for washing, cooking and irrigation, etc. Unfortunately safe potable water is becoming scarce day by day though nature has gifted us water in abundance through the rivers, sea, ponds, underground water reserves and rainwater. However most of the water goes waste in one way or the other and people of desert States like Rajasthan and Gujarat remain thirsty. There are thousands of villages and hamlets in such States where there is not a single source of water. It is common scene in Rajasthan where women travel ten to twenty Kilometres, wasting many hours to bring one or two pitchers of drinking water to quench the thirst of their families. Sometimes even this small quantity of water is not easily available. If one goes to a village household in Rajasthan he may be offered milk but not water, which shows the scarcity of potable water in this desert State.

The rainfall in the desert and drought prone areas remains scanty and below normal. Even if there is normal rainfall the rainwater goes waste in the absence of infrastructure of rain water harvesting. Similarly, due to excessive use, the water table has gone down at dangerous level in these areas. In most of the places the water has been contaminated and has become saline or contains excessive minerals like iron, zinc, lead fluoride, arsenic, etc. But people have no option but to drink the contaminated water which is adversely affecting their health and they are being crippled. The river water is going waste in the sea. This water may be used for the benefit of desert and drought prone areas, may be used for the political issue.

Under entry 17 of the State list of the Seventh Schedule to the Constitution water is a State subject. This provision is subject to entry 56 of Union list, which also speaks about expediency in public interest. It is a well known fact that despite being in the State list, States have not succeeded in providing potable water to their population and the Centre has formulated the Rajiv Gandhi Drinking Water Mission, etc. Hence in the larger interest of the people of desert and drought prone areas, the Central Government must come forward to provide safe potable water to these people. The Centre has to prepare a special plan for this purpose, which will be implemented by the States and funded by the Centre. As such there will be no conflict between the Centre and States.

Hence this Bill.

PRABHA THAKUR

**FINANCIAL MEMORANDUM**

Clause 6 of the Bill provides that Central Government shall provide necessary funds for the purposes of this Bill. The Bill if enacted will involve expenditure from the Consolidated Fund of India. It is estimated that a sum of rupees one thousand five hundred crores may be involved as recurring expenditure per annum.

A sum of rupees one hundred crores may also involve as non-recurring expenditure.

**MEMORANDUM REGARDING DELEGATED LEGISLATION**

Clause 8 of the Bill empowers the Central Government to make rules for carrying out the purposes of this Bill. The rules will relate to matters of details only.

The delegation of legislative power is of a normal character.



## V

## BILL NO. III OF 2005

*A Bill further to amend the Constitution of India.*

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 2005.

Short title  
and  
commencement

(2) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

2. After article 16 of the Constitution, the following article shall be inserted namely:—

Insertion of  
new article  
16A.

"16A(1). Notwithstanding anything contained in the Constitution, every citizen who has attained the age of eighteen years shall have, as per his educational qualification, physical ability and other requisites, the right to work and it shall be the duty of the State to provide work either in public or in private sector, as the case may be, under this article to the citizens.

Right to  
work,  
unemployment  
allowance and  
equal pay for  
equal work.

(2) In the event of the failure of the State to provide work under Clause (1) to any citizen, such citizen shall be paid an unemployment allowance at the rate of one thousand rupees per month till he gets employment.

(3) There shall be equal pay for equal work for both men and women in all spheres of work."

3. In article 39 of the Constitution, clause (d) shall be omitted.

Amendment  
of article 39.

## STATEMENT OF OBJECTS AND REASONS

After population explosion the biggest challenge before the nation is rising unemployment amongst the educated, illiterate and semi-educated youth, who have become frustrated and restless over this explosive problem which has assumed menacing proportions. Employment opportunities are fast receding in public sector. Government jobs have become scarce. Public Sector Enterprises, Banks, etc. are trimming their manpower through Voluntary Retirement Schemes, etc. There is nominal recruitment in public sector. Agriculture, till now used to generate maximum employment but due to persistent natural calamities like drought, flood, etc. and lack of remunerative prices of agricultural produce, this sector instead of generating more employment opportunities is rather shrinking.

SSI sector, Village and Cottage Industries sectors used to give gainful employment opportunities. However, due to the entry of multinationals, etc. these sectors too are vanishing very fast. The situation is very grim. Even the educated youth have become indigent. They are being lured by anti-social and anti-national elements. It is also leading to brain drain and exodus of a large number of skilled and unskilled persons abroad.

Any delay in the solution of this gigantic problem will be to the detriment of our vital national interests and goals. Hence it is high time that concerted efforts are made by the State to assure employment to the citizens of the country and to enable the Government to do so, right to work has to be made a fundamental right. If the State fails to provide gainful employment, the unemployment youth should be paid unemployment allowance.

It is pity that even after more than five decades of independence and adoption of the Constitution, the inequality between a man and a woman in the sphere of wage of equal work remains as before. In practice the women workers, more so in the agricultural, construction and other sectors, are paid less than the male workers. If it is left to itself there is hardly any hope that the situation will change in future. Hence to ensure equal pay for equal work to men and women, it should be incorporated in the fundamental rights.

Hence this Bill.

PRABHA THAKUR

#### FINANCIAL MEMORANDUM

Clause 2 of the Bill provides for right to work and payment of unemployment allowance to the unemployed youth. The Bill, if enacted will involve expenditure from the Consolidated Fund of India. It is estimated that a sum of rupees ten thousand crores per annum may involve as recurring expenditure.

A non-recurring expenditure of rupees one hundred crores may also involve from the Consolidated Fund of India.

## VI

## BILL NO. IV OF 2005

*A Bill to provide for compulsory insurance of crops and livestock of the farmers through a Comprehensive Insurance Scheme to be formulated by the Central Government for the benefit and protection of farmers against losses suffered during natural calamities and for matters connected therewith and incidental thereto.*

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

Short title,  
extent and  
commence-  
ment.

1. (1) This Act may be called the Comprehensive Crop and Livestock Insurance Scheme Act, 2005.

(2) It extends to the whole of India.

(3) It shall come into force at once.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "appropriate Government" means in the case of a State the Government of that State and in other cases the Central Government;

(b) "Crop" includes wheat, paddy, gram, bajra, Jowar, barley, millet, maize, and all types of cereals, pulses and oilseeds, fruits, vegetables and such other agricultural commodities which may be notified from time to time by the Central Government in the Official Gazette;

(c) "Insurance scheme" means comprehensive Crop and Livestock Insurance Scheme framed under section 3;

(d) "livestock" includes cow, buffalo, goat, camel, bull, pig, hen, horse, donkey, sheep and other animals reared by the farmers;

(e) "natural calamity" includes flood, drought, cyclone, earthquake, landslides, extreme cold conditions, hailstorm, storm and such other natural happenings affecting the crops and livestock;

(f) "prescribed" means prescribed by rules made under this Act.

3. (1) The Central Government shall, as soon as may be, frame, by notification in the Official Gazette, a scheme to be known as "Comprehensive Crop and Livestock Insurance Scheme" to protect the interests of the farmers against natural calamity and in particular of the desert and drought prone areas.

Comprehensive  
Crop and  
Livestock  
Insurance  
Scheme.

(2) The Insurance Scheme formulated under sub-section (1) shall be compulsory.

(3) The Insurance Scheme shall, *inter alia*, provide for,—

(a) the terms and conditions of crop and livestock insurance;

(b) the extent to which loss caused by natural calamities may be covered.

(c) to make up the loss of crops suffered by farmers in case of their inability to sow the crops due to continuity of natural calamity like drought;

(d) the rate of premium to be paid by farmers and percentage to be shared by appropriate Government;

(e) adjustment and payment of claims for losses under the scheme in kind or in cash, in accordance with rules as may be prescribed under this Act;

(f) such other matters which the Central Government may deem necessary for carrying out the purposes of this Act.

4. The Insurance Scheme formulated under section 3 shall be administered by the appropriate Government in such manner as may be prescribed.

Appropriate  
Government to  
administer the  
Insurance  
Scheme.

5. (1) The Central Government shall, as soon as may be, by notification in the Official Gazette, establish a Crop and Livestock Insurance Fund for the purposes of this Act.

Establishment  
of Crop and  
Livestock  
Insurance  
Fund.

(2) The initial corpus of the Fund shall be rupees two thousand crores to be provided by the Central Government by due appropriation made by Parliament by law in this behalf.

(3) The Fund thereafter shall consist of,—

(a) premium amounts received;

(b) Grants made by the Central and State Governments;

(c) donations given by corporates, individuals, financial institutions within the country and abroad;

(d) income from investments made, if any.

(4) The Fund shall be utilised for the purposes of this Act.

Team to assess loss of crop and livestock due to natural calamity.

6. The Central Government shall in consultation with the concerned Governments of the States and by notification in the Official Gazette, constitute such number of teams of officers, representatives of the farmers and experts as it may deem necessary for the assessment of losses caused by natural calamity for which the farmers need to be compensated within a time frame.

Payment of insurance amount.

7. (1) It shall be the responsibility of the appropriate Government to pay the insurance amount to every farmer for the loss of crop and livestock suffered by him due to natural calamity.

(2) The unit of settlement of insurance claims shall be a village.

Long term concessional loans to farmers.

8. (1) Notwithstanding anything contained in any other law for the time being in force, the public sector and cooperative Banks shall advance to farmers affected by natural calamity such amount, as may be determined by the Central Government, as a long term loan for carrying out agricultural operations and for purchasing needed livestock.

(2) The loan referred to in sub-section (1) shall be repayable in easy instalments over such period as may be prescribed with simple interest not exceeding three per cent per annum.

Power to remove difficulties.

9. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty.

Savings.

10. The provisions of this Act shall be in addition to and not in derogation of any other law for the time being applicable to the farmers covered under this Act.

Power to make rules.

11. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

## STATEMENT OF OBJECTS AND REASONS

In some parts of the country many farmers have committed suicide because their crops had failed and they were unable to re-pay the loan taken from Banks, Cooperatives and moneylenders. Failure of crops has become a frequent phenomena because our agriculture still depends on the vagary of monsoon. If the monsoon is good the farmers too reap good harvest but if the monsoon is poor or there are drought conditions the hopes of farmers are dashed with the lost crops. Unfortunately, droughts have become regular in Rajasthan, Gujarat, Chhattisgarh, parts of Andhra Pradesh, Madhya Pradesh, Bihar, U.P., Orissa and some other States. Rajasthan faces drought conditions for years together. Similarly, crops are damaged by other natural calamities like floods, cyclones, landslides, earthquake, hailstorm, etc. Likewise, livestock are also lost by farmers in the natural calamities. It is felt that had the crops and livestock been covered under Comprehensive Crop and Livestock Insurance Scheme the farmers would not have been driven to commit suicides.

Though a Crop Insurance Scheme was introduced by the Central Government in the recent past but only a few States have implemented this Scheme and that too partially. Hence a compulsory and Comprehensive Crop and Livestock Insurance Scheme has become necessary and is urgently needed. This will give a new hope to millions of farmers in the country and more so to the farmers of desert States like Rajasthan and other drought prone areas.

Hence this Bill.

PRABHA THAKUR.

## FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for Comprehensive Crop and Livestock Insurance Scheme. Clause 5 provides for the establishment of Crop and Livestock Insurance Fund. The Bill if enacted will involve expenditure from the Consolidated Fund of India. Apart from two thousand crore rupees as initial corpus it will involve three thousand crore rupees as recurring expenditure per annum.



**MEMORANDUM REGARDING DELEGATED LEGISLATION**

Clause 11 of the Bill gives power to the Central Government to make rules for carrying out the purposes of the Bill. The rules will relate to matters of details only.

The delegation of legislative power is of a normal character.

## VII

## BILL NO. VI OF 2005

*A Bill to provide for indemnity from civil and criminal proceedings to physicians and surgeons withdrawing life sustaining treatment from patients suffering from terminal illness and for matters connected therewith.*

*Whereas it is expedient to provide for indemnity from civil and criminal proceedings to physicians and surgeons for performing euthanasia through withdrawing life sustaining treatment from patients suffering from terminal illness.*

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

Short title,  
extent and  
commence-  
ment.

1. (1) This Act may be called the Physicians and Surgeons (Indemnity from Civil and Criminal Proceedings for Performing Euthanasia) Act, 2005.

(2) It extends to the whole of India.

(3) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette appoint.

2. In this Act unless the context otherwise requires:—

Definitions.

(a) "maintenance medical treatment" means all artificial means or measures of whatever kind administered as medical or surgical treatment designed solely to sustain the life processes of a patient;

(b) "Patient" means a person treated by a physician or surgeon for any illness, ailment, sickness or injury;

(c) "Petitioner" means any person authorised by this Act who may petition the courts for relief;

48 of 1970

(d) "Physician" and "Surgeon" means a person authorised to practise medicine or surgery under the provisions of the Indian Medical Council Act, 1970 or any other law in force for the time being;

(e) "Terminal illness" or "terminal injury" means any illness or injury which will in all probability result in the expiration of life, regardless of the use or discontinuance of medical or surgical treatment.

3. (1) Where a patient of a sound mind suffering from a terminal illness or terminal injury calls upon his physician or surgeon in writing to withdraw maintenance medical treatment, the physician or surgeon may comply with such request.

Withdrawal of maintenance medical treatment and indemnity from Civil and Criminal liability.

(2) Notwithstanding anything contained in any other law for the time being in force, where such physician or surgeon withdraws maintenance medical treatment as provided in sub-section (1) he or she, the patient and members of his/her family, shall be free from any civil or criminal proceedings whatsoever.

4. Any person of sound mind shall be entitled to make declaration and give a Power of Attorney in the forms appended to this Act duly executed by such person expressing the desire that, if at any time in the future he or she were to suffer from a terminal illness or terminal injury and be unable to express himself or herself, the wish embodied in the Declaration and Power of Attorney shall, if it has been in operation for 30 days and has not been duly revoked in writing be given effect to by his physician or surgeon and the members of his/her family; and in such circumstances the physician or surgeon and the members of his/her family complying with the request made in the aforesaid declaration and Power of Attorney shall be free from any civil or criminal proceedings whatsoever.

Declaration for withdrawal of maintenance medical treatment.

5. Where a physician or surgeon in a hospital or institution fails to give effect to the request of the patient in the circumstances mentioned in sub-section (1) of Section 3 that maintenance medical treatment be withdrawn and if the case is not transferred to another physician or surgeon who is willing to respond to the patient's request, the patient may file a Petition in a District Court or in a Court exercising similar jurisdiction in the form appended to this Act against such physician or surgeon praying for his/her wish to be respected or for discharge from that hospital or institution and the Court shall give such relief to the Petitioner as the Court may deem fit.

Petition for withdrawal of maintenance medical treatment.

6. Where a physician or surgeon fails to respond to the wishes of his patient as expressed in the Declaration and Power of Attorney made earlier by the patient under Section 4, the Executors of the patient may file a petition in the form attached to this Act in a District Court or in a Court exercising similar jurisdiction against the physician or surgeon praying that the wishes of the patient as expressed in the Declaration and the Power of Attorney be given effect to and the Court shall give such relief to the Petitioners as the Court may deem fit.

Petitions by executors of patient.

## DECLARATION

(See section 4)

This Declaration is made by me.....  
of .....at a time when I am of sound mind and after careful  
consideration:

(1) If the time comes when I can no longer take part in decision for my own future, let  
this Declaration stand as the testament to my wishes.

(2) If there is no reasonable prospect of my recovery from physical illness or impairment  
expected to cause me severe distress or to render me incapable of rational existence or, my  
vital bodily functions are incapable of independent operation, I should be deemed to  
decline to receive artificial medical treatment and to ask to be kept free from pain and distress.

(3) If I suffer from heart arrest, it is my request that efforts at resuscitation be  
abandoned at the end of three minutes.

In the absence of my ability to give directions regarding the use of such life sustaining  
procedures, it is my intention that this Declaration shall be honoured by my family and  
physician as the final expression of my legal right to refuse medical or surgical treatment and  
accept the consequence from such refusal.

This Declaration is signed and dated by me in the presence of the two undermentioned  
witnesses present at the same time who at my request in my presence and in the presence of  
each other have hereunto subscribed their names as witnesses.

Dated..... Signed.....

This declarant has been personally known to me and I believe him/her to be of sound  
mind.

Witness : 1

Name : .....

Address : .....

Signed .....

Witness : 2

Name : .....

Address : .....

Signed .....

Note:—Witness should not be members of the family.

## SPECIAL POWER OF ATTORNEY

A POWER OF ATTORNEY given this.....20.....by me,  
.....of.....

(full name)

WHEREAS (1) I have executed a declaration dated.....20.....stating  
that in circumstances there set out I should be deemed to decline to receive artificial medical  
treatment and to ask to be kept free from pain and distress:

(2) I seek to ensure that the wishes expressed in my declaration will be fully respected.  
NOW THIS DEED WITNESSES that I appoint.....  
of.....and.....

of.....  
who have expressed their acceptance to act as such, jointly or severally to be my attorneys  
for the purpose of securing compliance with the terms of my said declaration and I vest in my  
attorneys jointly or severally power to interpret, make decisions and take action on my  
behalf with regard to my declaration notwithstanding any contrary views held by any other  
person.

I declare that this Power of Attorney shall remain in force during my lifetime until  
notice of its revocation is received by my attorneys AS WITNESS my hand this day  
SIGNED, SEALED AND DELIVERED

by me.....(full name)

in the presence of.....(full name)

of.....(full address)

Red Wafer  
Seal

Before the Notary

### STATEMENT OF OBJECTS AND REASONS

The main purpose of the Bill is to authorise physicians and surgeons to withdraw all maintenance medical treatment as defined in the Bill in the case of a patient who is thought, on reasonable ground, to be suffering from a condition of a distressing and terminal character and who calls upon his physician or surgeon in writing to do so.

Medical science has now acquired life supporting systems and medications to extend life artificially for long periods even after the loss of brain activities and the control of bodily functions. Many people today have a fear that they will be kept alive artificially in this manner with consequent suffering and distress to them and members of their family. Since the decision to reject such artificial treatment should be of the patient alone and no one else, the Bill provides for voluntary passive Euthanasia and does not provide for mercy killing of any kind.

As the law now stands, physicians and surgeons who wish, in the interest of compassion and humanity, to respond to the patient's wishes in a suitable case, are inhibited from acting in accordance with their conscience by the fear that they might be breaking the law of the land of which they are loyal citizens. It is, also possible that a doctor in such a predicament may be exposed to blackmail. It is, therefore necessary that doctors who act with care and humanity shall be protected from prosecution.

In order that the right of a patient may be respected even after he is not able to participate in a decision about himself, it is proposed in the Bill to provide for the right of an adult person to make a written declaration and execute a Power of Attorney expressing his wish in advance of the event. The Bill does however mention that such Power of Attorney, if it should at any time be revoked in writing by the person concerned, shall not be operative.

Hence this Bill.

SHARAD ANANTRAO JOSHI

## VIII

## BILL NO. XI OF 2005

*A Bill further to amend the Constitution of India.*

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

Short title and  
commence-  
ment.

1. (1) This Act may be called the Constitution (Amendment) Act, 2005.
- (2) It shall come into force with immediate effect.

Omission of  
article 31B.

2. Article 31B of the Constitution shall be omitted.

Omission of  
Ninth  
Schedule.

3. Ninth Schedule to the Constitution shall be omitted.

## STATEMENT OF OBJECTS AND REASONS

Article 31B and the Ninth Schedule to the Constitution were introduced by the first amendment to the Constitution in 1951. The purpose at that time was to eliminate all possible sources of delay in implementing development projects by removing possible obstacles. It denies a certain class of citizens their right of recourse to Law in defence of their Fundamental Rights. The provision gave protection to the arbitrary use of powers for a acquisition of land that gave rise to many massive agitations. In the epoch of economic reforms coercive acquisition of land has no place. The State ought to acquire lands for the purpose of its projects through market operations. Since these provisions have outlived their utility it is better to do away with them.

Hence this Bill.

SHARAD ANANTRAO JOSHI

## IX

## BILL No. XV OF 2005

*A Bill further to amend the Constitution of India.*

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

Short title  
and com-  
mencement.

1. (1) This Act may be called the Constitution (Amendment) Act, 2005.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment  
of article 75

2. In article 75 of the Constitution to clause (3), the following proviso shall be added namely:—

“Provided that a Motion of no confidence in the Council of Ministers shall not be admissible in the House of the People unless it includes an affirmative expression of confidence in a new set of Council of Ministers with a Prime Minister as its head to aid and advise the President.”



3. After article 83 of the Constitution, the following article shall be inserted, namely:—

Insertion of  
new article  
83A.

“83A. Notwithstanding anything in this Constitution, the elections to the House of the People and the Legislative Assembly of every State shall be held simultaneously:

Simultaneous  
election to  
the House of  
the People  
and State  
Legislative  
Assemblies.

Provided that when a State is under a Proclamation under article 356 of the Constitution, the elections to that State Legislative Assembly shall be held under the existing provisions of the Constitution and of the Representation of the People Act 1951:

Provided further that the next election after the election so held under the foregoing proviso shall be held simultaneously with the elections to the House of the People”.

4. In article 164 of the Constitution to clause (2), the following proviso shall be added namely:—

Amendment  
of article 164.

“Provided that a Motion of no confidence in the Council of Ministers shall not be admissible in the Legislative Assembly of the State unless it includes an affirmative expression of confidence in a new set of Council of Ministers with a Chief Minister as its head to aid and advise the Governor”.

### STATEMENT OF OBJECTS AND REASONS

The object of the Bill is to ensure that elections to the House of People and the State Assemblies are held simultaneously in a fixed month every five years and that a Motion of no confidence in the Council of Ministers either in the House of the People or in a Legislative Assembly of a State shall not be admissible unless it includes an affirmative expression of confidence in a new set of Council of Ministers with a Prime Minister/Chief Ministers as its head.

In the years immediately after independence, elections to the House of the People and to the Legislative Assemblies of the States were held simultaneously, but in recent years the practice has been to hold the elections to the House of the People in one month throughout the country and to hold elections to the Legislative Assemblies of the States on different dates. In addition, elections are also being held to the Local Bodies in different States on different dates. As a result, the country is thrown into election mode practically throughout the year causing great dislocation of normal work and colossal expenditure on the part of the Governments conducting the elections, the political parties and the candidates.

Elections in our country have become very time consuming and expensive exercises. With over one billion population and an electorate of over 600 million, the country conducts the largest election among all democratic countries of the world. The number of polling booths for a General Election in our country is about nine lakhs, each requiring a minimum of five persons to man it, which means the employment of about 4.5 million people for polling duty. In addition, police personnel numbering about 2.5 million are required for security duties. The polling personnel are withdrawn from their regular duties, such as, teaching, administrative work, etc., for a few days before and after the elections causing serious interference with their normal schedules of work.

Because of the operation of the Election Code of Conduct new projects and commencement of work even of approved projects get postponed as the authorities in the government do not wish to be accused of influencing the voters through such approvals. For about two months after the notification of the elections, all activities in the field relating to new development projects practically come to a stand still. Since the elections are held separately for the House of the People, the Legislative Assemblies and the Local Bodies, development projects are delayed for long periods of time.

It would have been ideal if elections to the local bodies are also held simultaneously with those to the House of the people and the Legislative Assemblies, but it is felt that conducting elections to the Local Bodies along with the elections to the House of People and the State Assemblies should be considered at a later stage after the electorate would have gained some more experience in participation in simultaneous elections.

Simultaneous elections on fixed dates every five years will be feasible only if there is no premature dissolution of the legislatures. The occasion for dissolution arises either when a government is defeated on a no confidence Motion or if a ruling party chooses to call a new election for its own reasons or in the States when the provisions of article 356 of the Constitution are invoked. In order to prevent premature dissolution of legislatures and the need for frequent elections, the Bill proposes that a Government should not be voted out through a no confidence Motion without proving the feasibility of an alternative government through an affirmative Motion of confidence. This will ensure that even though there may be changes of the Governments at the Centre and the States, the House of People and the State Assemblies will continue for a fixed term of five years.

In order to meet the contingencies arising out of the invocation of article 356 of the Constitution in a State, the Bill proposes that election to the State Assembly after the one held immediately after the termination of the action under article 356, will be held simultaneously

with the election to the House of People. Thus even the State which held an election to the Legislative Assembly after the period of administration under article 356, will revert to the schedule of simultaneous election to the House of the People and the State Assemblies throughout the country.

Hence this Bill.

P. C. ALEXANDER

## X

## BILL NO. XXX OF 2004

*A Bill further to amend the Representation of the People Act, 1951.*

BE it enacted by Parliament in the Fifty-fifth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Representation of the People (Amendment) Act, 2004.

Amendment of section 8 of Act 43 of 1951.

2. In section 8 of the Representation of the People Act, 1951, after section 8A, the following section shall be inserted namely:—

Disqualification on the ground of framing of charges by a competent Court.

“8B. Without prejudice to the provisions of section 8, a person against whom charges have been framed by a competent Court under section 240 of the Code of Criminal Procedure, 1973 for committing any offence, punishable with imprisonment for a term which may extend to five years or more or with a death sentence under the Indian Penal Code or under any other law for the time being in force, shall be disqualified so long as he is not discharged or acquitted by such a court.

2 of 1974.

45 of 1860.

## STATEMENT OF OBJECTS AND REASONS

Recent trends show that a number of persons with criminal antecedents are entering the State Legislatures and the Parliament. In many cases, serious charges are levelled against such persons and due to the inevitable delays in the judicial process combined with the influence of money and muscle power, such persons are able to prolong the trial of criminal cases against them thereby defeating the ends of justice. To prevent persons charged in a Court of law after investigation of heinous criminal offences from exploiting the inevitable delays in the judicial process, it is proposed to make the framing of charges by a competent Court a ground for disqualification—in addition to conviction as in the case of other offences referred to in section 8 of the Act. The Law Commission of India in its 170th Report on the Reform of Electoral laws has also recommended that the Representation of the People Act, 1951 should be amended to the same effect. This is the view taken by the Election Commission as well. The Report of the National Commission to Review the Working of the Constitution (March 2002) has characterized the entry of criminals in politics as a matter of great concern and has also recommended that the Representation of the People Act be amended to provide that any person charged with any offence punishable with imprisonment for a maximum term of five years or more should be disqualified from being chosen as and from being a Member of Parliament or the legislature of a State.

The existing safeguard against mala-fide or politically motivated prosecutions already provided for in section 11 of the Act will continue to apply to the disqualification incurred under section 8B. Section 11 provides that “the Election Commission may for reasons to be recorded remove any disqualification under this Chapter (Except under section 8A) or reduce the period of any such disqualification.”

If enacted, this measure will help to de-criminalize politics, and it is hoped that it will go a long way towards cleansing and purifying the public life.

The Bill seeks to achieve the above object.

FALI S. NARIMAN

## XI

## BILL NO. I OF 2005

*A Bill to provide for the protection of the interests of homebased women entrepreneurs and workers who earn their livelihood or support the income of their families by making papad, vadi, pickles, dhooop-agarbathis, dolls and other handicraft items, stitching of clothes, doing embroidery work, knitting woollen items, packaging various consumer or cosmetic items either with the help of their family members or by engaging poor women and girls for the purpose by remaining at home and producing given product, by way of ensuring security of regular work, reasonable remuneration or rates to be paid and for other welfare measures to be undertaken by the State for such women entrepreneurs and workers and for matters connected therewith and incidental thereto.*

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

Short title,  
extent and  
commencement

1. (1) This Act may be called the Homebased Women Entrepreneurs and Workers (Security of Regular Work, Reasonable Remuneration And Other Welfare Measures) Act, 2005.

(2) It extends to the whole of India.

(3) It shall come into force with immediate effect.

2. In this Act, unless the context otherwise requires:

Definitions.

(a) "appropriate government" means in the case of a State, the Government of that State and in other cases the Central Government;

(b) "employer" means any person having overall control over the affairs of an establishment and who gets his work done from the homebased workers or entrepreneurs either directly or through some contractor;

(c) "establishment" means any place of work, premises and precincts thereof in which any trade, business or manufacturing work is ordinarily carried out by an employer;

(d) "homebased woman worker" means any woman or girl who produces any given product at her residence for remuneration;

(e) "prescribed" means prescribed by rules made under this Act;

(f) "woman entrepreneur" means any woman who either of her own or through her family engages homebased women workers to produce a given product for her either at her own house or at the house of the woman worker, as the case may be.

3. (1) The Central Government shall, in consultation with the State Governments, Union Territory Administrations and Womens' Organisations, formulate national policy for the protection and welfare of homebased women entrepreneurs and workers.

Central Government to formulate national policy for the welfare of homebased women entrepreneurs and workers.

(2) It shall be the duty of the Central and State Governments and Union Territory Administrations to implement the national policy formulated under sub-Section (1) in letter and spirit.

4. The appropriate Government shall ensure regular work to every homebased woman entrepreneur and worker in close co-operation with the chamber of commerce and other trade organizations functioning within its territorial jurisdiction.

Appropriate Government to ensure regular work to homebased women workers.

5. (1) Notwithstanding anything contained in another law for the time being in force, every employer shall pay minimum wages to a homebased woman worker at such rates, as the appropriate Government may, from time to time determine;

Minimum wages for homebased women workers.

(2) The minimum wages fixed under sub-section (1), if fixed on a piece rate basis, shall in any case, not be less than the wages fixed on time basis;

(3) While calculating the wages on piece rate, the time taken by a homebased woman worker in coming to collect raw material and depositing the finished product shall also be taken into account for the purpose.

6. Notwithstanding anything contained in any other law for the time-being in force, the appropriate Government shall provide necessary maternity benefits to every homebased woman worker who is in need of such benefits free of cost and pay minimum wages to such worker for such period and in such manner as may be prescribed.

Maternity benefits to homebased women workers.

7. The appropriate Government shall constitute a Family Security Fund for the homebased women entrepreneurs and workers to help the needy families of such workers in such manner as may be prescribed.

Family Security Fund.

8. The Central Government, after due appropriation made by Parliament by law in this behalf, shall provide adequate funds for the Family Security Fund established under Section 7.

Central Government to make available funds for the family Security Fund.

Pension and  
Provident  
Fund Scheme.

9. The appropriate Government shall formulate and implement a mutual pension and provident fund scheme for the homebased women workers in such manner as may be prescribed.

Lay off  
wages.

10. Every employer who is unable to give work to a homebased woman worker regularly engaged by him on account of bad weather, shortage of raw material or such other circumstances, shall pay lay off wages to such worker at such rates and in such manner as may be prescribed.

Penalty.

11. Any employer, who contravenes the provisions of this Act, shall be punishable with imprisonment which may extend to three months or with fine which may extend to one lakh rupees or with both.

Power to  
make rules.

12. (1) The Central Government may by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, the rules may provide for—

(a) terms and conditions of service of the homebased women workers and entrepreneurs;

(b) maintaining register of employers employing homebased workers;

(c) maintaining of homebased women entrepreneurs, block and district-wise;

(d) maintaining register of homebased women workers, block-wise and district-wise;

(e) issuing of identity cards to every homebased women worker;

(f) survey of homebased women entrepreneurs and workers to be carried out from time to time.

Savings.

13. The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force regulating any of the matters dealt within this Act.



## STATEMENT OF OBJECTS AND REASONS

There are millions of girls and housewives who earn their livelihood or supplement the income of their poor families by preparing *papad*, *vadi*, *bhujia* and other *namkeens*, *dhoop-agarbathis*, dolls and handicraft items, stitching of clothes, embroidery, knitting woollen sweaters and many other garments, packaging various consumer or cosmetic items generally with the help of their family members and remaining at their place of residence. They either get the requisite raw material from their employers or bring it on their own and give back the finished product either for a remuneration or price-wise payments. These housewives are exploited by the employers who give meagre remuneration to them though they themselves earn a lot of profits. The housewives cannot resist the exploitation because in that case they will not get the work. If they fall sick they do not earn anything. Similarly for maternity also, they do not get needed benefits. As such they remain an exploited lot. It is, therefore, felt that Central and State Governments should come forward to help such homebased women workers by preparing a national plan for their welfare in a big way.

Hence this Bill.

PREMA CARIAPPA

## FINANCIAL MEMORANDUM

Clause 7 of the Bill provides for the establishment of Family Security Fund for the homebased women workers. Clause 8 provides that Central Government shall make available adequate funds for the Family Security Fund. The Bill, if enacted, will involve expenditure from the Consolidated Fund of India. It is estimated that a sum of rupees fifty crores may involve as recurring expenditure per annum.

No non-recurring expenditure is likely to be involved.

**MEMORANDUM REGARDING DELEGATED LEGISLATION**

Clause 12 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. The delegation of legislative power is of normal character.

## XII

## BILL NO. V OF 2005

*A Bill to provide for the empowerment of women to enable them to have equal participation in the governance of the country by making reservations and such other provisions in the body polity such as executive, legislative and judiciary and for matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Women (Empowerment for Equal Participation) Act, 2005.

(2) It extends to the whole of India.

(3) It shall come into force with immediate effect.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "appropriate Government" means in the case of a State, the Government of that State and in other cases the Central Government;

(b) "Election Commission" means the Election Commission established under article 324 of the Constitution of India;

(c) "prescribed" means prescribed by rules made under this Act.

3. Notwithstanding anything contained in any law for the time being in force the Election Commission shall, while conducting elections to the office of the President of India or the Vice-President of India, as the case may be, shall ensure that a woman candidate is elected to each of these offices for alternate terms in such manner as may be determined by the Election Commission.

Election of women to the office of President and Vice-President of India.

4. The Prime Minister shall ensure that not less than thirty-three per cent of Ministerial berths in the Union Council of Ministers are filled up from amongst the women members of Parliament.

Ministerial berths in the Union Council of Ministers for women.

5. (1) Notwithstanding anything contained in the Election Laws or any other law for the time being in force, the Election Commission shall reserve not less than forty per cent of the total seats each in the Lok Sabha and the Rajya Sabha for women candidates in such manner as may be prescribed.

Reservation of seats for women in Parliament.

(2) The seats so reserved for women under sub-section (1) shall bear, as nearest as may be, to the total number of seats allotted to a State or Union Territory in Lok Sabha as the population of women in that State or Union Territory as the case may be, in respect of which seats are so reserved bears to the total population of the State or Union Territory.

(3) In case of Rajya Sabha provisions of sub-section (1) of section 5 shall apply only to those States or Union Territories which have been allocated more than three seats under the Fourth Schedule to the Constitution and in respect of those States and Union Territories which have been allocated one or two seats, the seat for women shall be earmarked in the following manner:—

(a) where there are two seats one seat shall be reserved for a woman candidate;

(b) where there is only one seat it shall be filled up by a woman candidate in alternate terms.

6. Notwithstanding anything contained in the Constitution or in any other law for the time being in force the appropriate Government shall reserve not less than thirty-three per cent of the total strength of Judges in the Supreme Court, all High Courts and the Subordinate or lower Courts for women Judges.

Reservation for women in Judiciary.

7. Notwithstanding anything contained in the Constitution in any other law or practice for the time being in force, the President of India shall, while appointing Governor of a State or Lieutenant Governor or Administrator of a Union Territory, as the case may be, ensure that a woman is appointed to that office for alternate term in such manner as may be determined by the President.

Appointment of Women Governors.

8. Notwithstanding anything contained in the Election Laws or any other law for the time being in force, the Election Commission shall, reserve not less than forty per cent of total seats in the Legislature of a State for women in such manner as may be prescribed.

Reservation for women in State Legislatures.

9. The Chief Minister of a State or Union Territory, as the case may be, shall, while constituting his Council of Ministers, ensure that forty per cent of the Ministerial berths are filled up for amongst the women legislators of the State or Union Territory, as the case may be.

Ministerial berths in the Council of Ministers of the States for the Women.

Reservation  
for women in  
Finance and  
Planning  
Commissions.

10. The President shall, while constituting a Finance Commission or the Planning Commission, as the case may be, appoint a minimum of two women members excluding the chairperson of such Commissions in such manner as may be determined by him.

Reservation  
for women in  
Public Service  
Commission.

11. The President or Governor of a State shall, while appointing the Chairman or members of the Union Public Service Commission, or of the State Public Service Commission, appoint as nearly as may be, one half of the members from amongst the women in such manner as may be prescribed.

Reservation  
for women in  
the Election  
Commission.

12. Notwithstanding anything contained in any other law for the time being in force the President shall appoint the Chief Election Commissioner and other Election Commissioners in the Election Commission in such manner that there shall always be one woman Election Commissioner serving in the Election Commission.

Reservation  
of posts in  
Government  
services for  
women.

13. Notwithstanding anything contained in any other law for the time being in force, the appropriate Government shall reserve forty per cent of all Government jobs in all departments, public enterprises, Banks, Universities, Colleges, local bodies, schools run by Government or getting grants from Government, hospitals and public utility services, autonomous bodies and bodies being given grants by the Government in any manner, in the reserved as well as general categories of posts for women belonging to such categories.

Reservation  
for women in  
Boards of  
various  
bodies.

14. Notwithstanding anything contained in any other law for the time being in force the appropriate Government shall reserve as nearly as may be one half of the members of the Boards of autonomous bodies including Banks, Universities, Colleges, Councils, Boards, etc. from amongst the women in such manner as may be prescribed.

Act to have  
overriding  
effect.

15. The provisions of this Act and rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force but save as aforesaid the provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force regulating any of the matters dealt within this Act.

Power to  
make rules.

16. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

## STATEMENT OF OBJECTS AND REASONS

Women despite being nearly half of the country's population, still remain socially neglected and economically dependent on others who may be parents, husband or children, are educationally backward and an exploited lot. Majority of them are confined to their houses looking after their children and household chores. Many of them are still superstitious, orthodox and backward because literacy among them and more so in rural areas is very low. Now only more awakening has begun amongst women and they have started playing a vital role in the polity of the nation right from village Panchayat to Parliament of the nation.

On the basis of their number, women should have equal participation with men in the Governance of the nation but the fact is otherwise. Their participation is negligible. Despite being most suitable, no woman has ever occupied the office of either the President of India, Vice-President of India or the Chief Justice of India. Their number in Parliament and State Legislatures is negligible. The issue of reservation for women in Parliament and State Legislatures is hanging for years together. Most of the political parties swear for the upliftment of women but at the time of elections they give tickets mostly to male candidates. Similarly, women are neglected in the formation of the Council of Ministers at the Union as well as at the State levels. As such the representation of women is negligible in Executive and Legislative wings of our polity.

The representation of women in the Judiciary, notably in the Supreme Court and High Courts, is far from satisfactory though best legal brains amongst women are available in the country. Similar is the case in the Election Commission and Public Service Commissions of the country. So far eleven Finance Commissions have been constituted but women have been completely ignored therein. Similar is the case in respect of Boards of Directors of various bodies of the Government, PSEs and other institutions.

In Government services also the representation of women is abysmally low as compared to men. It is below twenty per cent and in reserved categories, the representation of women is negligible.

However, awakening is emerging now with the demand of empowerment of women on the principle of Equality enshrined in the Constitution. A beginning has been done by providing for reservation for women in local bodies like Village Panchayats, Municipalities, etc. but that is not enough. They should have equal participation in the governance of the nation on the basis of their numerical strength.

Hence this Bill.

PREMA CARIAPPA.

**MEMORANDUM REGARDING DELEGATED LEGISLATION**

Clause 6 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. The rules will relate to matters of details only.

The delegation of legislative power is of normal character.



## XIII

## BILL NO. VII OF 2005

*A Bill to provide for the improvement of working conditions and removal of discrimination of women workers working in the agriculture, plantation and fisheries sectors by removing wage disparities on gender basis and to provide for basic facilities like maternity and other medical benefits, creches, aanganwadis, resting place, etc. and for welfare measures like old age pension, work during whole of the year, compensation for accident, etc. and for matters connected therewith and incidental thereto.*

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Women Workers of Agricultural, Plantations and Fisheries Sectors (Equal Wages, Basic Facilities and Other Welfare Measures) Act, 2005.

(2) It extends to the whole of India.

(3) It shall come into force with immediate effect.

Short title,  
extent and  
commence-  
ment.

## Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "accident" means an injury caused to a woman worker per chance or accidentally while working in an agricultural operation or in plantation or in fish processing unit or place, as the case may be and includes any injury caused due to falling from any machinery or due to any machinery, falling from a tree or falling into a well, or receiving electric shock, snake bite or attack by any wild or domestic animal or due to fire and such other incidents;

(b) "appropriate Government" means in the case of a State, the Government of the respective State and in other cases the Central Government;

(c) "partial disablement" means the disability which may reduce the working capacity of woman worker temporarily;

(d) "prescribed" means prescribed by rules made under this Act;

(e) "total disablement" means such disability resulting in incapacitation of a woman worker for all works which she was capable of performing;

(f) "welfare Fund" means Women Workers of Agricultural, Plantations and Fisheries Sectors Welfare Fund established under Section 11;

(g) "woman worker" includes any female worker working in agricultural, plantation or fisheries sector, as the case may be, who earns her livelihood by working in any of these sectors;

(h) words and expressions used but not defined in this Act and defined in the Fisheries Act, 1897 and the Plantations Labour Act, 1951 shall have the meanings respectively assigned to them in those Acts.

4 of 1897.  
69 of 1951.

## Minimum wages for women workers.

3. (1) Notwithstanding anything contained in any other law for the time being in force, the appropriate Government shall, by notification in the Official Gazette, fix the minimum wages, from time to time, for the women workers:

Provided that different rates of minimum wages may be fixed for women workers of agricultural, plantations and fisheries sector respectively:

Provided further that the minimum wages fixed under this Act shall not be less than eighty rupees per day.

(2) There shall be no discrimination in wages payable to men and women workers under this Act for similar nature of work performed by them and whoever contravenes this provision shall be guilty of an offence under this Act.

## Registration of employers and women workers.

4. Every employer of women workers and the women workers shall get themselves registered with the appropriate Government in such manner as may be prescribed.

## Prohibition of employing unregistered women workers.

5. No employer shall employ any unregistered woman workers in agricultural operation, plantation or fish processing unit or establishment, as the case may be.

## Maternity benefits.

6. The appropriate Government shall provide maternity benefits to every woman workers who is in need of it and shall pay full remuneration to such worker, for such period and in such manner, as may be prescribed.

## Creches and Aanganwadis.

7. The appropriate Government shall provide such number of creches and Aanganwadis as it may deem necessary for the purposes of this Act to take proper care of the children of women workers.

8. The appropriate Government shall provide necessary medical facilities including the facilities required in accidental cases, to all the women workers residing or working within its territorial jurisdiction.

Other medical facilities.

9. The appropriate Government shall pay old age allowance to women workers in such manner and at such rates, as may be prescribed from time to time and the allowance shall be paid from the welfare fund.

Old age allowance.

10. The appropriate Government shall provide regular work to every woman worker covered under this Act under various job oriented schemes.

Provision of regular work.

11. (1) The Central Government shall, by notification in the Official Gazette, establish the Women Workers of Agricultural, Plantations and Fisheries Sectors Welfare Fund at the national level for carrying out the purposes of this Act.

Establishment of Welfare Fund.

(2) The Central Government shall, after due appropriation made by Parliament in this behalf, provide initial capital of five hundred crores of rupees to the corpus of Welfare Fund.

(3) After the Welfare Fund so establish, funds shall be provided to the Welfare Fund by the Central and State Government in such proportion as may be agreed to by them from time to time.

(4) The employers of women workers shall also contribute to the Welfare Fund in such manner as may be prescribed.

(5) The Welfare Fund may also get contributions and donations from the general public, entrepreneurs and corporate houses.

12. The Welfare Fund shall be administered by the Central Government in consultation with the Governments of the States in such manner as may be prescribed.

Administration of the Welfare Fund.

13. (1) If any woman worker meets with an accident while working or otherwise, she shall be entitled to compensation out of the Welfare Fund.

Compensation in case of accident.

(2) The amount of compensation payable under sub-section (1) to a woman worker sustaining injury resulting in her death, permanent disablement or partial disablement shall be such as may be specified by the Central Government from time to time by notification in the Official Gazette.

(3) The compensation under this Act shall be claimed in such manner as may be prescribed.

(4) Every claim for compensation under this Act shall be cleared within thirty days of filing of such claim with the appropriate Government.

14. The Central Government shall, after due appropriation made by Parliament by law in this behalf, provide necessary funds, from time to time, at the disposal of the Governments of the States for the implementation of the Welfare provisions of this Act.

Central Government to provide necessary funds.

15. Whoever contravenes the provisions of section 3 shall be liable for imprisonment which may extend to five years or with fine which may extend to five lakh rupees or with both.

Penalty.

16. The provisions of this Act and rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law or agreement whether made before or after the commencement of this Act:

Act to have overriding effect.

Provided that where under any such law or agreement the women workers are entitled to get benefits in respect of any matter which are more favourable to them than

those to which they would be entitled under this Act, the women workers shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that they received benefits in respect of other matters under this Act.

Power to  
make rules

17. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

## STATEMENT OF OBJECTS AND REASONS

There are millions of women agricultural workers working in the fields, farms, etc. doing all sorts of work related to agriculture and livestock. Similarly, they work in tea, coffee and other plantations. They also work in fish processing and other related works. These hapless women are forced to work to earn not only their livelihood but also to supplement and support their poor families. Though the women workers are doing the same work as the male workers but, unfortunately, there is gender discrimination in so far as the wages are concerned. Though the employers are supposed to give women remuneration equal to the men workers but the hard fact is otherwise and women workers are paid less and it is within the knowledge of the Central and State Governments. This gender discrimination has to be dealt with sternly by providing deterrent punishment for the exploitation of women workers and violation of law. At the same time, the women workers often meet with accidents causing injuries leading to partial or total disablement and in many cases leading to death. Many a time they get bitten by snakes or other poisonous creatures or attacked by wild animals.

Similarly, the women workers sometimes also suffer from diseases caused by the work which they do, which may at times be quite serious. For instance, most of women workers in fish processing sector develop skin diseases particularly on hands and feet, but they seldom get medical facilities. Maternity benefits, creches, *aanganwadis*, etc. are unknown to majority of the women workers. In their old age they have to fend for themselves as there is no social security net for them and many of them ultimately, die in harness. Being a Welfare State, it becomes obligatory for the State to take care of the women workers and initiate Welfare measures for them such as medical facilities, maternity benefits, security of work, insurance against accidents, old age pension and other facilities. The State has also to take care of their children for their proper development as they are the future of the Country.

Hence this Bill.

PREMACARIAPPA

## FINANCIAL MEMORANDUM

Clause 6 of the Bill provides for the maternity benefits to be provided by the Government to women workers. Clause 11 provides for the establishment of Women Workers of Agricultural, Plantations and Fisheries Sectors Welfare Fund. Clause 14 of the Bill provides that Central Government shall provide necessary funds for the purposes of this Bill. This Bill if enacted will involve expenditure from the Consolidated Fund of India. It is estimated that a sum of Rupees One Thousand Crores may involve per annum as recurring expenditure.

A non recurring expenditure of rupees five hundred Crores may also be involved for the purposes of this Bill.

**MEMORANDUM REGARDING DELEGATED LEGISLATION**

Clause 17 of the Bill empowers the Central Government to make rules for carrying out the purposes of this Bill. The rules will relate to matters of details only.

The delegation of legislative power is of normal character.

## XIV

## BILL NO. XVII OF 2005

*A Bill to provide for payment of unemployment allowance to all educated unemployed youth and for matters connected therewith.*

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

Short title,  
extent and  
Commence-  
ment.

1. (1) This Act may be called the Unemployment Allowance Act, 2005.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.



2. The Central Government shall provide unemployment allowance to all educated unemployed youth at the rate of—

Central Government to provide unemployment allowance to all educated unemployed youth.

(i) rupees one thousand per month to those who have attained the age of sixteen years and have passed tenth class examination;

(ii) rupees one thousand five hundred per month to those who have attained the age of eighteen years and have studied up to senior secondary and above;

(iii) rupees two thousand five hundred per month to those who possess technical qualifications in engineering, medicine, etc., or have some other professional qualification:

Provided that the unemployment allowance referred to above shall be paid to a person till he secures employment.

3. Every person who has been provided with unemployment allowance under the provisions of this Act shall, on securing employment, repay the total unemployment allowance, which he had received, to the Government at the rate of—

Unemployment allowance to be repaid back after gaining employment.

(i) rupees fifty per month, if he was receiving unemployment allowance of rupees one thousand per month;

(ii) rupees one hundred per month, if he was receiving unemployment allowance of rupees one thousand five hundred per month; and

(iii) rupees two hundred per month, if he was receiving unemployment allowance of rupees two thousand five hundred per month.

4. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

### STATEMENT OF OBJECTS AND REASONS

The number of unemployed youth is on the increase. The Government has not been able to generate employment in the country. The unemployed youth have become restless and have started taking law into their own hands. They often fall victim to anti-social elements. Suicides by unemployed youth have also been reported.

The most unfortunate fact is that even those who possess technical qualifications like engineering, medical, etc. face the same problem. Liberalisation of economic policy has also failed to generate employment in the country. Therefore, it is absolutely necessary that the Government should come up with some schemes for providing employment or in the alternate provide relief to all unemployed persons till they secure employment. Although, the assistance sought to be given will not be sufficient for them but nevertheless it will be a great help and a source of confidence to them. It has also been provided that unemployed youth who get unemployment allowance shall have to repay the allowance received by them to the Government after they secure employment.

The Bill seeks to achieve the above objective.

DATTA MEGHE

### FINANCIAL MEMORANDUM

Clause 2 of the Bill provides for payment of unemployment allowance to all educated unemployed youth according to their qualification.

The Bill, therefore, if enacted, will involve an expenditure from the Consolidated Fund of India. It is estimated that an annual recurring expenditure of about rupees three hundred crore is like to be involved from the Consolidated Fund of India.

**MEMORANDUM REGARDING DELEGATED LEGISLATION**

Clause 5 of the Bill empowers to the Central Government to make rules for carrying out the purposes of the Bill. The rules will relate to matters of details only.

The delegation of legislative power is of a normal character.

## XV

## BILL NO. XXV OF 2005

*A Bill to provide for the protection and welfare of cotton growers and for matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Cotton Growers (Welfare) Act, 2005.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. In this Act, unless the context otherwise requires,
  - (a) "cotton grower" means any person who cultivates cotton;
  - (b) "prescribed" means prescribed by rules made under this Act.
  - (c) "welfare fund" means the Cotton Growers Welfare Fund established under section 6 of this Act.

Short title  
extent and  
commence  
ment.

Definitions.

Procurement  
of cotton.

3. The Central Government, through the Cotton Corporation of India, shall procure the entire quantity of cotton produced in the country and shall also fix remunerative price of cotton every year after taking into consideration the increase in prices of cotton seeds, pesticides and fertilizers, total investment capacity of cotton seeds, pesticides and fertilizers, total investment capacity of cotton growers and such other factors, as may be prescribed.

Export of  
excess cotton.

4. The Central Government shall endeavour to export all the excess cotton produced in the country during a year through such agencies and in such manner as may be prescribed.

Compulsory  
Insurance of  
cotton crop.

5. Notwithstanding anything contained in any other law for the time being in force the entire cotton crop grown by the small and marginal cotton growers shall be compulsarily insured free of cost by the Central Government against natural calamities, decline in yields of cotton produced, fall in prices of cotton and such other eventualities, as may be prescribed.

Cotton  
Growers  
Welfare Fund.

6. (1) The Central Government shall establish a Fund to be known as the Cotton Growers Welfare Fund.

(2) The Central Government and every State Government shall contribute to the Fund in such ratio, as may be prescribed.

Utilization of  
the Fund.

7. The fund shall be utilized to:—

(a) extend financial help to the small and marginal farmers in such cases, as may be prescribed;

(b) give financial assistance to cotton growers for purchasing cotton seeds, pesticides and fertilizers and in cases of low yields or fall in prices of cotton or destruction of their crops due to rains, cyclones and floods.

Act to have  
overriding  
effect.

8. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Power to  
make rules.

9. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

## STATEMENT OF OBJECTS AND REASONS

Cotton growers are passing through a state of crisis. Price of the cotton grown by them depends heavily on market forces. Sometimes, adverse natural conditions also add to their woes. Further, the situation gets complicated for them due to the neglect shown by the Government towards the conditions of cotton growers. Over the years, the cotton yield per hectare is declining and the constantly falling price of cotton has made things difficult for the poor farmers. Like Gujarat and Andhra Pradesh, Maharashtra also is a major cotton growing State. The cotton growers belonging to this State too are facing problems like cotton growers of Gujarat and Andhra Pradesh because of the cost of inputs used for growing cotton is increasing every year and this is adversely affecting the total capital investment of cotton growers. Rather than getting remunerative prices for their product, cotton growers are facing the problem of declining prices every year.

There are many reasons which have contributed to the problems that are being faced by the cotton growers and one of the prime reasons for their problems is that they are getting non-remunerative prices due to excess stock of cotton in the market for various reasons. There is an urgent need to enact a law assuring the cotton growers of the help of the Government in the event of excess stock of cotton in the market or fall in price of cotton. There is also a need to ensure that the basic requirements of the cotton growers are taken care of by the Government. It is, therefore, felt that creation of a fund and making a provision of compulsory insurance cover for cotton growers will help them in some way.

Hence this Bill.

DATTA MEGHE

## FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the purchase of cotton from cotton growers by the Central Government through the Cotton Corporation of India. Clause 5 provides that the entire cotton crop grown by small and marginal cotton growers shall be compulsarily insured free of cost by the Central Government against natural calamities, etc. Clause 6 provides for the establishment of a Cotton Growers Welfare Fund to which the Central Government and State Governments shall contribute in such ratio, as may be prescribed. The Bill, therefore, if enacted, would involve expenditure from the Consolidated Fund of India. It is likely to involve a recurring expenditure of rupees two hundred crore per annum.

A non-recurring expenditure to the tune of rupees three hundred crore is also likely to be involved.



**MEMORANDUM REGARDING DELEGATED LEGISLATION**

Clause 9 of the Bill empowers the Central Government to make rules for carrying out the purposes of this Bill. The rules will relate to matters of detail only. The delegation of legislative power is of a normal character.

## XVI

## BILL NO. XXVII OF 2005

*A Bill to provide for the preparation and maintenance of a National Register of citizens by the Government and for issuing photo identity cards to all the citizens of the country to check illegal immigration and overstay of foreigners in the country and for matters connected therewith.*

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

Short title,  
extent and  
commencement.

1. (1) This Act may be called the Compulsory Maintenance of National Register of Citizens Act, 2005.

(2) It extends to the whole of India;

(3) It shall come into force with immediate effect.

Definition

2. In this Act, unless the context otherwise requires,—

(a) “Government” means the Central Government;

(b) “prescribed” means prescribed by rules made under this Act.

3. (1) The Government shall prepare and maintain a National Register of all the citizens of the country containing name, name of parents, age, residential address and such other particular as may be prescribed and shall also revise it from time to time.

Maintenance  
of National  
Register of  
Citizens.

(2) The Government shall make such arrangements as it may deem necessary to enable the Indian citizens who are living abroad temporarily and wish to retain their Indian Citizenship to get their names included in the National Register of Citizens in such manner as may be prescribed.

4. Every citizen whose name has been entered in the National Register of Citizens shall be issued a Photo Identity Card with such particulars and in such form as may be prescribed by a competent authority appointed or authorised by the Government for the purpose.

Issue of  
Photo  
Identity Cards  
to citizens.

5. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to  
make rules.

## STATEMENT OF OBJECTS AND REASONS

Our country is already overcrowded as its population has crossed the one billion mark. Despite this, millions of illegal immigrants from neighbouring countries have sneaked into our country and settled in various parts. These immigrants continue to come here in search of jobs and food. Similarly quite a good number of foreigners, most from our neighbouring countries enter our country for a **Limited Period Visa** but even after the expiry of their Visa period they do not go back to their countries and stay here illegally. There are reports that these illegal immigrants indulge in anti-national and criminal activities. They also share the benefits of progress made by our country which would have otherwise been available to our *bona fide* citizens. These illegal immigrants have become a liability on our poor country. This menace of illegal immigrants can be solved if a National Register of Indian Citizens is maintained and all the *bona fide* citizens are issued **Photo Identity Cards** on a continuous basis. Government has started this process on pilot basis in border areas of the country but it needs to be introduced throughout the country only then the desired results can be achieved.

Hence this Bill.

S. S. AHLUWALIA

## FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for maintenance of National Register of Citizens Clause 4 provides for issue of Photo Identity Cards to citizens. The Bill if enacted will involve expenditure from the Consolidated Fund of India. It is estimated that a sum of rupees five hundred crores may involve as recurring expenditure per annum.

Non recurring expenditure to the tune of rupees two thousand crores may also involve.

**MEMORANDUM REGARDING DELEGATED LEGISLATION**

Clause 5 of the Bill gives power to the Central Government to make rules for carrying out the purposes of the Bill. The rules will relate to matters of details only.

The delegation of legislative power is, therefore, of normal character.

## XVII

## BILL NO. XXVI OF 2005

*A Bill further to amend the Indian Penal Code, 1860.*

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

1. This Act may be called the Indian Penal Code (Amendment) Act, 2005.

Short title.

45 of 1860

2. In the Preamble to the Indian Penal Code 1860 (hereinafter referred to as the Principal Act) the words "whereas it is expedient to provide a general Penal Code for India" shall be omitted.

Amendment of the Preamble.

3. For section 1 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 1.

"1. (1) This Act may be called the Penal Code, 1860.

Short title, and extent.

(2) It extends to the whole of India."

4. Section 18 of the principal Act shall be omitted.

Omission of section 18.

- Amendment of section 269. 5. In section 269 of the principal Act, for the words "six months" the words "two years" shall be substituted.
- Amendment of section 272. 6. In section 272 of the principal Act, for the words "six months, or with fine which may extend to one thousand rupees" the words "two years or with fine which may extend to twenty thousand rupees" shall be substituted.
- Amendment of section 273. 7. In section 273 of the principal Act, for the words "six months, or with fine which may extend to one thousand rupees" the words "two years or with fine which may extend to ten thousand rupees" shall be substituted.
- Amendment of section 274. 8. In section 274 of the principal Act, for the words "six months, or with fine which may extend to one thousand rupees" the words "five years or with fine which may extend to twenty thousand rupees" shall be substituted.
- Amendment of section 275. 9. In section 275 of the principal Act, for the words "six months, or with fine which may extend to one thousand rupees" the words "five years or with fine which may extend to ten thousand rupees" shall be substituted.
- Amendment of section 278. 10. In section 278 of the principal Act, for the words "five hundred rupees" the words "five thousand rupees" shall be substituted.
- Amendment of section 279. 11. In section 279 of the principal Act, for the words "six months, or with fine which may extend to one thousand rupees" the words "six years or with fine which may extend to ten thousand rupees" shall be substituted.
- Amendment of section 290. 12. In section 290 of the principal Act, for the words "two hundred rupees" the words "two thousand rupees" shall be substituted.
- Amendment of section 304A. 13. In section 304A of the principal Act, for the words "two years" the words "ten years" shall be substituted.
- Amendment of section 309. 14. In section 309 of the principal Act, for the words "with simple imprisonment for a term which may extend to one year or with fine or with both" the words "with fine which may extend to one hundred rupees" shall be substituted.
- Amendment of section 376. 15. In section 376 of the principal Act, after sub-section (2) the following sub-section shall be inserted, namely:—  
"(3) Notwithstanding anything contained in sub-section (2) whoever commits rape on a woman when she is under ten years of age shall be punished with death"
- Amendment of section 497. 16. In section 497 of the principal Act for the words "In such case the wife shall not be punishable as an abettor" the words "In such case the wife shall also be punishable as an abettor for a term which may extend to five years" shall be substituted.



## STATEMENT OF OBJECTS AND REASONS

The Indian Penal Code, though a masterpiece legislation was enacted at the Westminster by the colonial regime of Britishers to rule the Indian masses. So the title given to the code was "Indian Penal Code". Even after achieving independence this code remains in force with the same title and the word "Indian" in the title gives a bad taste and reminds the atrocities committed by the Britishers on the freedom fighters of our country under this code. So the word "Indian" in the title of the code requires to be omitted forthwith and the same has been proposed in the Bill. Similarly if we go through this code it appears in the plain sense of interpretation as if Jammu and Kashmir is a separate State and not a part and parcel of our country. This has to be removed by suitably amending the code.

These days some heinous crimes such as adulteration of food and medicines, polluting air and water to the poisonous level, rash and negligent driving on congested roads endangering the lives of road users and even causing death, on roads are increasing manifold day by day. One of the reasons of increase in such crimes is that the quantum of punishment prescribed in the Penal Code is very meagre. It has, therefore, been proposed to enhance the punishment for such crimes, to have a deterrent effect on the law breakers.

Of late, cases of rape on women have increased manifold but the worst part of this crime is rape on minor girls who are even below five years of age and in some worst cases infant girls of a few months have brutally been raped by adult males. In such cases there should be no leniency at all and rapists must be hanged to death.

Similarly, the crime of adultery in section 497 of the Code does not give equality to both the sexes. This section provides punishment only for the male who commits adultery. Since adultery can be committed only with the consent of a married woman it is unfair to prosecute only the male and not the female. In a case of adultery the Supreme Court had agreed that section 497 of I.P.C. is unjustified but going by the law as it is at present the Supreme Court could not prosecute the woman. Hence it is proposed to suitably amend section 497 of the Indian Penal Code to bring the woman at par with the man in case of adultery.

This Bill seeks to achieve the above objects.

S. S. AHLUWALIA

## XVIII

## BILL NO. XXIV OF 2005

*A Bill to provide for the establishment of an Atomic Authority for the purposes of setting up an atomic power plant for generating electricity in the State of Jharkhand and for matters connected therewith.*

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

Short title  
and com-  
mencement.

1. (1) This Act may be called the Jharkhand Atomic Authority Act, 2005.

(2) It shall come into force with immediate effect.

Establishment  
of Jharkhand  
Atomic  
Authority.

**2. The Central Government shall establish an Authority to be called the Jharkhand Atomic Authority in the State of Jharkhand.**

Composition  
of the  
Authority.

**3. (1) The Authority shall consist of the following members, namely:—**

(a) the Prime Minister of India, who shall be the *ex-officio* Chairman of the Authority;

(b) the Chief Minister of the State of Jharkhand or in his absence the Governor of the State of Jharkhand, who shall be the *ex-officio* Vice Chairman of the Authority;

(c) eighteen Scientists, nine to be nominated by the Central Government and nine by the Government of Jharkhand State in accordance with such procedure as may be prescribed by rules framed under this Act; and

(d) one member, to be appointed by the Central Government in consultation with the Government of the State of Jharkhand, who shall be the Director of the Authority.

(2) The terms and conditions of the service of the members referred to in clause (c) and (d) of sub-section (1) shall be such as may be prescribed by rules made under this Act.

(3) Subject to such rules as may be made by the Central Government in this behalf, the Authority may, for the purposes of enabling it to perform its functions or exercise its powers efficiently under this Act, appoint such officers and other employees, as it may think fit, and determine their functions and conditions of services.

**4. The funds of the Authority shall consist of,—**

Funds of the  
Authority.

(a) contributions, subscriptions and donations made to it by any person; and

(b) annual grants made to it by the Central Government after due appropriation made by Parliament in this behalf.

**5. The functions of the Authority shall be to,—**

Functions of  
the  
Authority.

(a) set up an atomic power plant at an appropriate place in the State of Jharkhand;

(b) set up atomic power plant for generating electricity to meet the energy needs of the State as well as those States in its neighbourhood whosoever shall intent to obtain supply of surplus electricity energy from the Authority;

(c) perform such other functions as may be incidental, or conducive to the discharge of its main functions;

**6. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.**

Power to  
make rules.

### STATEMENT OF OBJECTS AND REASONS

There is acute shortage of electricity in the State of Jharkhand and several other states in the region resulting in backwardness of the State and the entire region. The lowest per capita consumption of electricity registered in the region has been largely attributable to perennial scarcity of electric power at affordable cost. Supply of quality electricity produced by Atomic Power plant will not only facilitate development of the region but will also result in lowering of input cost for industries strengthening their competitiveness especially in the international markets.

Electricity can be produced by harnessing atomic energy and one of the richest areas in the world containing vital raw-material is located in the State of Jharkhand which has the richest Uranium deposits. In spite of that no atomic power plant for producing electricity has been set up in Jharkhand so far.

This Bill seeks to establish an Atomic Authority in Jharkhand to take appropriate steps for setting up of an atomic power plant in Jharkhand so that adequate electricity can be made available to meet the growing industrial and domestic consumption in Jharkhand. It will boost the economy of the State and generate employment opportunities.

Hence this Bill.

S. S. AHLUWALIA

## FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to establish the Jharkhand Atomic Authority. Clause 4 provides for grants to be made by the Central Government for its functioning. It is estimated that a sum of rupees one hundred crore will be required from the Consolidated Fund of India initially to set up the Authority. A sum of rupees two crores per year will also be required to meet the recurring expenditure.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 6 of the Bill empowers the Central Government to frame rules for carrying out the purposes of this Act. The delegation of legislative power is, therefore, of normal character.

## XIX

## BILL NO. XXVIII OF 2005

*A Bill further to amend the Constitution (Scheduled Tribes) (Union Territories) Order, 1951.*

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Scheduled Tribes) (Union Territories) Order (Delhi Amendment) Act, 2005. Short title.
2. In the Constitution (Scheduled Tribes) (Union Territories) Orders 1951, after paragraph 3, the following paragraph shall be inserted, namely:— Insertion of new paragraph 4.
  - "4. Notwithstanding anything contained in various orders issued from time to time in respect of Scheduled Tribes in pursuance of clause (1) of article 342 of the Constitution, all the Scheduled Tribes included in those orders shall be deemed to be Scheduled Tribes for all the purposes and benefits of reservation for the National Capital Territory of Delhi."

## STATEMENT OF OBJECTS AND REASONS

In the National Capital Territory of Delhi, Scheduled Tribes of entire country irrespective of their domiciles were getting benefits of reservation in Delhi Administration, Municipal Corporation of Delhi and other public sector undertakings under the control of Delhi Government since 1955. Similarly, Scheduled Tribes students were also being admitted in various academic and professional colleges as per their entitled reservation. The Delhi High Court in July, 2004 passed an order stating that since there is no notification under article 342 of the Constitution of Scheduled Tribes in respect of Delhi, there would not be any reservation for Scheduled Tribes in Delhi. As a result of this, the Delhi Government is not giving any appointment even to those Scheduled Tribes who have already been declared qualified on the basis of examination held in previous years for various posts. There is resentment among the Scheduled Tribes due to the fear that the vacancies may pass on to general category. Similar is the state of Scheduled Tribe students who are not getting admission in various colleges. Many Scheduled Tribes are living in Delhi since decades and have been brought up and educated in Delhi. They are feeling alienated for none of their fault. It is, therefore, necessary and judicious that Scheduled Tribes declared under article 342 for various States and Union territories should be treated as Scheduled Tribes for Delhi also and should be given benefits in the National Capital Territory of Delhi so that their conditions are ameliorated.

Hence the Bill.

MOOLCHAND MEENA



## XX

## BILL NO. XII OF 2005

*A Bill further to amend the Patents Act, 1970.*

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Patents (Amendment) Act, 2005.

Short title  
and com-  
mencement.

(2) It shall be deemed to have come into force on 1st day of January, 2005.

39 of 1970.

2. After section 83 of the Patents Act, 1970, the following section shall be inserted, namely:—

83A. (1) At any time after the sealing of a patent, any person interested may make an application in the prescribed form to the Controller for grant of compulsory licence under the patent on any of the following grounds, namely:—

Compulsory  
Licences for  
health care.

(a) that the invention claimed therein relates to a substance used or capable of being used as medicine or drug, or to the method or process for the manufacture or production of any such substance; and that such medicine or drug is required for eradication, prevention or control of, and/or for the diagnosis or treatment of diseases like HIV/AIDS, Tuberculosis, Malaria, Hepatitis or other life-threatening diseases, ailments or epidemics;

(b) that the invention claimed therein relates to a substance used or capable of being used as medicine or drug, or to the method or process for the manufacture or production of any such substance, and such medicine or drug—

(i) is included in the World Health Organisation list of Essential Drugs;

(ii) is required for diagnosis or treatment of any of the diseases or ailments covered by any of the National Health Plans or Schemes announced by the Central Government from time to time;

(iii) is required for any immunisation programs promoted, undertaken or approved by the Central or State Governments as the case may be;

(iv) is required for prevention or termination of pregnancies and or for family planning scheme promoted, undertaken or approved by the Central or State Governments or any other organisations or agencies approved for purpose by such Government;

(v) is required for improvement of health, nutrition, or hygienic standards of people; or

(vi) is required for prevention, control and or treatment of any diseases or ailments of human being.

(2) Upon receiving application, the Controller shall—

(a) in respect of all applications under Clause (a), and in respect of applications for licence for public non-commercial use under clause (b) of sub section (1), forthwith issue a compulsory licence under (EMR) Exclusive Marketing Right Patent upon the applicant undertaking to pay to the right holder the reasonable royalty or remuneration as may be fixed by the Controller in accordance with the provisions of this section.

(b) in respect of application for licence for commercial use of the invention for any of the purposes set out in Clause (b),—

proceed with further enquiry and grant of compulsory licence as per procedure prescribed in Section 87 if before making such application, the applicant has made efforts to obtain such authorisation on reasonable commercial terms and conditions, but such efforts have not been successful within a period of four months; or

direct the applicant to make such efforts, if the applicant has not done so before filing of the application, and in the meantime keep the application in abeyance, and proceed further with the application as per the prescribed procedure if the right holder has refused to grant such authorisation, or if such efforts have not been successful for a period of four months;

(3) The terms and conditions including the remuneration or royalty to be paid, shall be fixed by the Controller after holding enquiry on merits of each individual case, as per the procedure set out below:—

(i) The Controller shall give notice to both the parties calling upon them to file their written statement and evidence, if any, in support of their respective cases, and fixing a hearing in the matter on a date within three months after the notice;

(ii) Each party shall indicate in his written statement, the terms and conditions—including the remuneration to be fixed for grant of the licence, which he considers to be reasonable, fair and adequate, having regard to the

economic value of the authorisation. Any party not submitting his proposal for such terms and conditions and remuneration in his written statement, shall not be entitled to question the terms and conditions or the remuneration, as may be fixed by the Controller in his final decision confirming the grant of the compulsory licence; and

(iii) The Controller shall fix the reasonable terms and conditions for the licence on merits of each individual case, after hearing the parties. For this purpose, the Controller shall take into consideration, the terms and conditions proposed by both the parties, and the economic value of such authorisation having regard to any directions given or guidelines prescribed for the purpose by the Government. The Controller shall decide and dispose of the application for grant of compulsory licences within six months, from the date of filing, by a written order, briefly indicating the reasons for his order.

(4) The Central Government may from time to time give directions in individual case or generally, or prescribe guidelines for fixing the reasonable remuneration including the economic value of such authorisation. Such guidelines may prescribe the minimum and maximum limits of royalty payable on ex-factory sale price of the patented product in bulk;

(5) In respect of medicine or drug to be distributed on non-commercial basis, the rate of royalty shall not be less than 2 per cent and not exceed 4 per cent, and in respect of commercial use, the maximum rate of royalty allowable shall be 6 per cent.

(6) While fixing the terms and conditions and basis of remuneration to be paid, the Controller shall be guided by the objective of '*access to medicine for all*' and or promoting research for new drugs.

(7) Such licences shall be non-exclusive, non-assignable (except as part of the enterprise or goodwill), authorise predominantly for the supply of domestic market and shall be terminable if the circumstances which led to the grant of the licence have ceased to exist or are unlikely to recur.

(8) The decision of the Controller shall be subject to review by the Appellate Board on application by either party filed within one month of the Controller's decision and grant of the licence. Such review application shall be disposed of by Appellate Board within six months from the date of filing. Pending the disposal of such review application, the operation of the licence will not be liable to be stayed if the licensee agrees to pay/deposit the remuneration or royalty as fixed by the Controller.

## STATEMENT OF OBJECTS AND REASONS

With the introduction of product patent for drugs and medicines effective from 2005, the production and availability of generic drugs by adopting different processes will be denied. In product patent regimes, absence of generic competition enables patent owners to fix and maintain prices of their patented drugs at prohibitively high levels — in many cases as high as 30 to 40 times their costs. In several Sub-Saharan African and other developing countries, not even 1 per cent of the millions of suffering/dying victims of AIDS/HIV and blood cancer being unable to afford such prices, are denied treatment by such patented drugs. In USA even senior citizens being unable to pay such excessive prices of patented drugs in USA, are compelled to travel to Canada or import the drugs required by them.

Even in our Country, Novartis were importing their Imatinib Mesylate product under their brand name Glivec required for treatment of life-threatening disease—blood cancer—at the price of Rs. 1000 per capsule as against the price of Rs. 90 per capsule (or less), being produced locally and marketed by 6 Indian companies. On being allowed EMR (exclusive marketing right) for their Glivec product by the Patent Controller in November 2003, Novartis obtained Court orders and prevented the Indian companies from marketing their products. If after 2005, product patent is also granted to Novartis for Glivec, in absence of effective compulsory licence provisions, thousands of blood cancer patients will be deprived treatment by generic product available only at 9 per cent of Novartis's price, and will be left to die untreated, during the 20 years patent term. This specific instance clearly illustrates, the gravity of the health hazard that the nation and the poor millions will have to face when more than 4700 applications for product patents now pending in the mailbox are granted patents post 2005. It also shows the urgency and importance of ensuring generic production and competition through self-operating or built-in effective compulsory licences provisions in the Act and supportive Rules.

Consequently, to protect the lives of people suffering from pandemics, and to improve the health and nutrition standards of people—particularly the poor, measures have to be adopted to provide for generic competition to control the prices of patented drugs at fair and reasonable levels.

Art. 31 of TRIPS enables the Government to use or authorise third parties (which includes generic manufacturers) to use the patented invention without authorisation of the right holder (i.e., to grant compulsory licences) if the right holder refuses to give such authorisations "on reasonable commercial terms and conditions" and "within reasonable period of time". The proposed amendment has been drafted to incorporate all the procedural and other requirements prescribed in Article 31 of TRIPS.

Art. 5A(2) & (4) of Paris Convention (forming part of TRIPS read with Art. 7 and 8 of TRIPS) permits legislative measures to be adopted to prevent and control abuses of patent by right holder. Charging excessive prices, anti-competitive practices and 'failure to work' are recognised abuses of patent.

**The Doha Declaration on public health (DD):—**

- recognizes the gravity of the health crisis resulting from HIV/AIDS, tuberculosis, malaria and such other diseases;
- re-affirms:— "*We agree that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health*". .....that "*the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all*".

- directs that "Each provision of the TRIPS Agreement shall be read in the light of ..... its objectives and principles". (The principle expressed in TRIPS Article 8(1) is:— "Members may, in formulating or amending their national laws and regulations, adopt measures necessary to protect public health and nutrition.....");
- reaffirms "the right of WTO Members to use, to the full, the provisions in the TRIPS Agreement, which provide flexibility for this purpose" and confirms that "Each Member has the right to grant compulsory licences and the freedom to determine the grounds upon which such licences are granted".

This provision is intended to ensure that introduction of product patent system for drugs and medicines does not deprive the other citizens of their fundamental rights guaranteed by article 14, 19 and 21 of the Constitution and also does not prevent or interfere with the Central and State Governments discharging their mandatory functions and obligations under Directive Principles of State Policy of the Constitution to protect, promote and improve living and health standards of the people.

Hence this Bill.

EKANATH K. THAKUR

YOGENDRA NARAIN,  
*Secretary-General.*